Supreme Court, U.S.
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No. 96-673

IN THE
SUPREME COURT
OF THE UNITED STATES
October Term, 1996

PATRICIA HURST HOLT,

Petitioner,

-v-

J. L. PRESCOTT CO.,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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JURISDICTION

Respondent does not object to the statement of jurisdiction.

PERTINENT STATUTORY PROVISIONS

Respondent concurs with the pertinent statutory provisions.

STATEMENT OF THE CASE

Respondent disagrees with the statement of the case presented by Petitioner.

Petitioner fails to make reference to the course of dealing between the parties after the subject contract was formed. For example, after Shirley Keilly's death, J. A. Keilly attempted to amend the agreement which fact indicated that both parties to the contract interpreted the contract as applying solely to Shirley Keilly. (Petition, pp. 31a-32a) Moreover, Donald Spellman, an officer of Respondent at the time and the individual who actually negotiated the contract understood from J. A. Keilly that Shirley Keilly was an integral part of J. A. Keilly's business and that J. A. Keilly sought to name

Shirley Keilly as beneficiary. (Petition, pp. 32a-34a) Furthermore, the district court found that the contract term was written by J. A. Keilly. (Petition, p. 5a)

REASONS FOR DENYING THE PETITION

Petitioner has failed to demonstrate how the Petition falls within the ambit of Rule 10 (all references to the rules are the Supreme Court rules). This case presents no conflict of decisions of the United States Court of Appeal, no federal question, much less an important one, and no departure by the United States Court of Appeal from the accepted and usual course of judicial proceedings or a sanction of such a departure from a lower court. No United States Constitutional issue is raised. The case concerns issues of local law only.

Although unclear from the Petition, it appears the asserted error is the misapplication of a properly stated rule of law. In this regard, Petitioner requests the Court to exercise its supervisory powers claiming the district court "departed from reason" and the circuit court "misappli[ed] ... logic and reason." She contends these errors constitute "a departure from the accepted and usual course of judicial proceedings." However, Petitioner presents no irregularity. Thus, Respondent concludes Petitioner's apparent assertion of error is based upon an assertion of the misapplication of a properly stated rule of law, which assertion is specifically discouraged by Rule 10.[1]

First among Petitioner's reasons for granting the Petition is an implied invitation to the Court to rely on religious doctrine. Petitioner has, over the course of this litigation, elevated this issue from one of last resort to one of first resort

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[1]Nowhere does Petitioner complain of an erroneous factual finding.

as both facts and law have failed her. This invitation to the Court to rely on an extra-legal basis to grant Petitioner's Petition demonstrates the utter lack of legal basis for her position.

Petitioner then launches into an interpretation of the meaning of the subject contractual language. This interpretation was rejected both by the district court and the circuit court. Petitioner's argument renders the reference to Shirley Keilly in the contract as surplusage. If, as Petitioner argues, the contract stipulates a benefit to be paid to any wife of J. A. Keilly, there would be no need to name his wife. After all, how many wives could J. A. Keilly have at any one time?

Respondent has at all times contended that the language referred to a specific person, Shirley Keilly, then wife of Petitioner's late husband. The district court agreed (Petition, p. 24a) as did the circuit court (Petition, p. 30a). The district court found the contract to be ambiguous but, applying the California statutory rules of contract (see, Petition, pp. 2-3) interpretation to the facts found by it, concluded the Respondent's interpretation of the contract was the correct interpretation and found for Respondent. The circuit court found the subject language to be unambiguous, agreeing with Respondent's interpretation (Petition, p. 3, 1a).

Finally, Petitioner offers her view of what J. A. Keilly intended as an "eternal truth." Given California law concerning contractual interpretation, J. A. Keilly's intentions are irrelevant and this argument should be disregarded.

CONCLUSION

The decisions of the district and the circuit court are both correct in fact and in law. Moreover, Petitioner offers no good reasons why the Petition should be granted. Respondent requests that the Petition be denied.

Respectfully submitted,

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